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MEMORIAL

OF THE

BOARD OF COMMISSIONERS

OF

WASHINGTON COUNTY.

MEMORIAL.

To the Senate and House of Delegates of the State of Maryland:

The Board of Commissioners of Washington county respectfully represent:

That they have seen with great surprise the memorial of the Baltimore and Ohio Rail Road Company to the Legislature, praying to be released from the penalty of one million of dollars, which by the laws of this State, passed with the full consent of that corporation, was to be incurred by it in a certain event, and which by its subsequent voluntary act, has been forfeited for the benefit of Washington county.

The forfeiture in question grew out of the provisions of the act of 1835, ch. 395, which granted the sum of three millions to this company, and by which it was declared to be, and made the duty of this company, so to locate and construct their road, as to pass through Cumberland, Hagerstown and Boonsborough. To which, however, a proviso was added, that if the company should not locate their road in the manner directed by that act, they should forfeit a million of dollars to the State for the use of Washington county.

This act, which was passed in May 1836, required as a condition precedent to the payment of any part of the three millions granted by it, that the company should, in general meeting of the stockholders, approve, assent and agree to its provisions, and should communicate such assent and agreement to the Governor of Maryland before the 1st day of August then next. And accordingly, at a general meeting held in the city of Baltimore in July 1836, it was resolved, that the company did approve, assent and agree to the several provisions of the act referred to; and the President was requested to forward to the Governor before the first day of August then next, a copy of the resolution under his own signature and the seal of the corporation. All of which was done, and the resolution is now of record in the Executive Chamber at Annapolis.

Again, in the act of 1837, chapter 317, passed at the instance of, and conferring important immunities upon this corporation, the legislature after re-asserting the obligation of the company to locate their work conformably to the command of the original law, declared that nothing therein contained shall be construed as releasing them from the forfeiture of one million of dollars for the use of Washington county, upon their disobedience of that command. And the company was again required to signify their acceptance of the provisions of this law, and to

communicate the same to the Treasurer of the Western Shore, as a condition precedent to its going into effect.

This corporation seems now to consider that the General Assembly of Maryland were not in earnest in thus carefully guarding the rights of Washington county, and that these solemn acts, with their own deliberate and repeated assent to them, were a mere rabble of idle words, thrown together without aim or object, or meaning in themselves, and intended to be of no effect for any purpose, but to mislead and deceive a confiding and deeply interested people. This Board, however, are restrained by their respect for the legislature of their own State, and their reverence for its laws, from raising or discussing such a question.

The people of Washington county regard this million of dollars as damages liquidated in their behalf by the legislature, with the consent of the parties concerned. The line of duty marked out for this company, they have voluntarily and without cause departed from, and now they come forward, not to make reparation for the injuries they have inflicted—not even to say that the damages are too high, but that the whole treaty, with all its stipulations, and all the rights vested under it, shall be expunged and rendered utterly void.

This Board having said that the company did depart from its covenanted line of duty without any just cause, it is proper that they should state the facts upon which this allegation is founded.

In the twelfth annual report of the rail road company, dated December 13th, 1838, it is said, that the President with a committee of the directors and the chief engineer, attended the preceding session of the Virginia legislature, to urge upon that body the application for a renewal of the charter within the commonwealth, which would expire in the month of July, 1838. That a law was finally passed, extending the time for completing the work five years; "but it deprived the company of the option of selecting between the routes in the State of Maryland and those in the State of Virgima, between Harper's Ferry and Cumberland, and made it an express condition, that the road should pass into Virginia at Harper's Ferry, be thence constructed through that State to about five miles and a half below Cumberland, and that Wheeling should be one of the termini." The law also authorised an additional subscription of $1,058,420 on the part of the State. It is also stated in the same report, that the difference in the cost of construction in favor of the Virginia route, "in actual and equivalent capital," would be $4,983,-420.

From all which considerations it appears, that the excuse offered by the company for violating their own contract, a law of their own State, and the just hopes of a large body of her own citizens, is, that they were commanded to do so by the Legislature of Virginia. And moreover, that they were not only so commanded by the aforesaid Legislature of Virgima, but were amply indemnified against all the consequences of such violation, by an actual subscription to their work of $1,058,420, and by the presentation of a route beyond the limits of their own State,

possessing advantages over any within it, "in actual and equivalent capital" of $4,983,420. If the company in making these statements had been reasoning professedly, *against* the release of this forfeiture, this Board would have considered that they had made a very strong case.

It is however extremely difficult to comprehend how this difference of $4,983,420, "in actual and equivalent capital" or of $2,083,917 "in actual outlay in money," as stated under another view in the same report, should exist in point of fact between the two routes. And this difficulty will be found to be greatly enhanced, by a reference to other documents emanating from the same company.

In the report of the Engineer of Location, appended to the tenth annual report of the company, the surveys and estimates of these different routes, each passing from Harper's Ferry through the head of Washington county, and coming out upon the Potomac at the gorge of the North Mountain, are presented in detail. In reference to the first of these, which is termed the Western or Pleasent Valley Route, it is stated distinctly, that it is found to be "quite practicable, is direct in its general course, and without curves of a shorter radius than one thousand feet."

Of the second route the engineer remarks, that the whole distance by it from Harper's Ferry to the narrows of the North Mountain is thirty-six miles, being seven miles shorter than the first, and then it is added, "that a considerable superiority in respect to grade would belong to the river route, upon which it would not be necessary to employ a more rapid rate of ascent than twenty-five feet per mile, excepting perhaps in ascending from the Antietem to the Salisbury Ridge summit, when fifty feet per mile might be required, for perhaps, three miles."

A third route is also presented, which passing on the Virginia side, to a point opposite the mouth of the Antietem, then crosses the river and pursues the valley of that stream in its direction towards Hagerstown. And to this route the engineer seems to give the decided preference.

Now, in turning to the ninth annual report of this company, we find the survey and estimates of a route from a point on the Potomac, between Harper's Ferry, passing through Pleasant Valley, by Boonsborough and Hagerstown to Chambersburg in Pennsylvania. It must be here remarked that the portion of this latter survey which lies in Maryland, passes over the most difficult and expensive ground, encountered in either of the other routes above mentioned; and of the whole survey to Chambersburg, the Engineer says: "The entire distance was about forty-five miles, the greater portion of which was found to be extremely favorable, and the average cost per mile, for a single track, was estimated at $10,000."

This Board would here most respectfully ask the attention of the legislature, to these statements of the company's own agents. If the whole distance from Harper's Ferry to the gorge of the North Mountain, be but thirty-six miles, and if it be true that a single track upon the most difficult and expensive portion of that distance, would cost but $10,000 per mile, a double track would not, it is supposed, more than double that

cost. And the whole work, if these estimates are to be relied upon, would cost but $720,000; and in further proof that this is not an over estimate, it is only necessary to refer to the bill now pending before your honorable bodies, which declares that a road may be made some time hereafter from the main stem to Hagerstown—not the least costly moiety of the whole route in question,—"Provided the said lateral or branch road can be constructed *at a cost not exceeding* $350,000, including damages for the right of way."

It is in the face of these facts that we are gravely informed that the sum which the company must sacrifice by pursuing the Maryland route, "in actual outlay in money," would be $2,083,917, and that the loss "in actual and equivalent capital" would be the precise sum of $4,983,420. If we take the first amount and distribute it along the whole thirty-six miles, it will give to each mile an excess of cost, over the same discription of rail road in Virginia, of $56,322 30, which by the latter mode of computation, an improvement in Maryland is compelled to suffer the disparaging excess of $138,428 per mile.

It is believed, therefore, that some great mistake must have found its way into the calculations of the company, it being apparent that the whole work, either upon the Maryland or Virginia location, could not cost "in actual outlay in money" one half the sum which is assigned as the difference between the two, to say nothing of the cost "in actual and equivalent capital." The description of country, the undulation of surface, the character of the soil, the cost of excavation and embankment in the two States are the same; and it is deemed violently presumptive, that a mile of road would cost neither more nor less in the one State than in the other. The excess, therefore, of the cost of the Maryland route would be shewn at once by the amount of its greater distance. What this difference may be, the company have no where stated, and this Board have not the means of ascertaining precisely, but believe that it cannot exceed seven miles.

This Board cannot well understand why the city of Wheeling should refuse to become the western terminus of this magnificent work, merely because of a slight deflection either to the right or the left, in a distant, and to her, immaterial portion of its line. Nor can they comprehend wherefore the Legislature of Virginia, having given the right of way, without stint, in the original law, should have insisted, in the supplement, upon conditions which might defeat the whole enterprize, if it were not known beforehand that the officers of the corporation, who, it seems, were present when the law passed, would have no insurmountable objections to being bound up by such restrictions.

The compact between the State of Pennsylvania and this company, a history of which is given in its tenth annual report, furnishes a rational index to the mind of those under whose counsels the Virginia route has been adopted. It was there agreed upon, that Maryland should have the privilege of tapping at Columbia, on the Susquehanna, the vast improvements of Pennsylvania on the one part, and that a rail road from Pennsylvania should be permitted to form a junction with the main stem of

the Baltimore and Ohio Rail Road, at some point in Washington county, at or near Hagerstown or Williamsport, on the other. Baltimore made her own contract, stipulated for her own terms, the rail road company gave its consent in ample form, and the State became a party to the compact, by the act of 1835, chapter 340. Immediately afterwards the Tide Water Canal was projected, and with all convenient speed hastened to completion, and Baltimore is at this moment in the enjoyment of all its rich benefits. In due time the Franklin Rail Road finds its way into Washington county, and is brought to Hagerstown, when lo! the Baltimore and Ohio Rail Road is to be found no where in that vicinity—nor in the State of Maryland at all: but has been carried by a sweep of ninety into the interior of Virginia, at the safe distance of eighteen miles, from the contemplated point of junction with the Pennsylvania work.

It is by this species of diplomacy that the interests and the hopes of Washington county have been sacrificed. It is thus that she has been cast by Baltimore, as a new item on the debit side, in adjusting the balance sheet of trade and travel, *with the rival city of Philadelphia*, so often and portentiously alluded to, in the reports and memorials of this company. As often, therefore, as they shall be doomed to hear from that quarter the cry of alarm at any possible contact between their great work, and *the rival improvements of Pennsylvania*, this Board can but repeat the simple fact, "you agreed to the connexion, and have already received, in good faith from Pennsylvania, your own stipulated equivalent."

This Board, anxious from the first, for an adjustment of this controversy, applied to the company to know, upon what terms, if at all, it could be settled. Their first proposition was met by a refusal, and to their second communication, which was intended to open the way for a compromise, upon fair, and even generous terms, they received no answer whatever.

The people of Washington county ask nothing, as they would accept of nothing as a gratuity at the hands of this corporation. If they have no cause of action which they can stand upon in a court of law, they do not desire a recovery: if they have a good legal ground of action, they appeal to that alone as giving them an indisputable claim to the sanction. and even respect of the legislature. Under these views of their position, and of their duty to those whom they represent, this Board employed counsel, by whom suit was brought in Baltimore, which, however, upon further reflection, was ordered to be stricken off, and a new action instituted in Frederick county court, which is still pending.

The people of this county would ask nothing more from the justice or munificence of the legislature, than to give her back her "National Road," stretching as it does for fifty miles through the heart of her territory, and studded as it is, with thriving villages and valuable improvements all the way. Save these from the blight of depreciation and ruin which awaits them the moment the rail road shall cross the same turnpike at Cumberland, and this Board would ask for nothing more.

Restore these great advantages to her citizens, heretofore their pride and boast, and then offer them a million of dollars to see themselves cut off from all means of communication with either east or west, unless by a trudge of eighteen miles into Virginia, to get upon a rail road—to see their business connexions, and their long cherished social attachments with Baltimore surrendered at a blow, and themselves thrown into new fellowships among strangers, and she would regard it as no indemnity for such sacrifices.

Under these circumstances the people of this county derive but little consolation from the reflection that this magnificent rail road, which has been thus made to them the cause of incalculable mischief, is a work projected by their own friends, and paid for, in part, by their own money. And when that work shall hereafter become, as by chance it may, a dead weight upon the resources of the State, it will not lighten the burthen thereof to them or their descendants to know, that they must be taxed to sustain the means of their own ruin.

This Board have, in conclusion, only to add, that if the legislature shall regard the one million of dollars as a penalty, inserted in the laws referred to, for the purpose of covering as in a bond, the damages actually sustained, this Board will acquiesce in such construction and submit with cheerfulness to such mode of ascertaining the damages, as the legislature may appoint. Whether it be done by commissioners, appointed by the legislature for the purpose, or by a jury of Frederick county, where the suit is now pending, empowered to take the whole case into consideration and say what sum, under all the circumstances is due, they will be content, and if they get not a dollar, never murmur at the issue.

And this Board, willing now as heretofore, to do what is just and even generous in this matter, agree also, that the sum received, shall be secured by the bonds of the company, without interest, until their work is completed to Cumberland, and payable afterwards, in such easy instalments as shall cause no interference with any claim which the State may have, upon the resources of the company. In this event, this Board say for themselves and those they represent, that they desire no branch or lateral road, connecting them with the main stem of the Baltimore and Ohio Rail Road.

By order of the Board,

ROBERT FOWLER, *Prest.*